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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,406	12/03/2003	Jason M. Crippen	29351.00	5569
22465 7590 01/25/2008 PITTS AND BRITTIAN P C P O BOX 51295 KNOXVILLE, TN 37950-1295				
			EXAMINER AHMED, AFFAF	
			ART UNIT 3622	PAPER NUMBER
			MAIL DATE 01/25/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/726,406

Applicant(s)

CRIPPEN ET AL.

Examiner

Affaf Ahmed

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/03/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Status of Claims***

1. This action is in reply to the application filed on 12/03/2007.
2. Claim1-22 are currently pending and have been examined.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 2, 3, 8, 13, 14, 17, 18, 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - Claims 2, 13, 17 and 21 recite the limitation of: *wherein said process further includes reading a plurality of user information*. It is unclear how the process read the user information. Appropriate correction and /or clarification is required.
  - Claims 3, 14, 18 and 22 recite the limitation of: *wherein said process further includes a user customizing said advertisement*. It is unclear how user customizes the advertisement, since the advertisement is already selected. Appropriate correction and /or clarification is required.
  - Claim 8 recites the limitation of: *a means for routing an unanswered telephone call from a caller to a user*. It is unclear how the unanswered telephone call is routed from a caller to a user. Appropriate correction and/or clarification is required. For the purpose of this examination, Examiner interprets the above limitation as routing the unanswered call from a caller to a server. Claim 8 contradicts with claim 1 of applicant's invention, where the call is routed to a server not a user.
5. Claims 3, 14, 18 and 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.
  - Claims 3, 14, 18 and 22 recite the limitation of: *wherein said process further includes a user customizing said advertisement*. The specification teaches "the system checks to see if the user has subscribed to voice mail advertising. If the user has not, an out going message is

played for the caller and the caller's incoming message". The specification does not teach that the user customize the advertisement.

6. **Examiner's Note:** *The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.*

### **Claim Rejections - 35 USC § 103**

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1, 11, 15, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bayne, US Pat No: 7,158,621.

#### **Claims 1, 11, 15 and 19:**

Bayne discloses:

- *selecting an advertisement for playback (see at least column 3, lines 44-47);*
- *playing said advertisement to a caller (see at least column 9, lines 59-60);*
- *billing an advertiser if said caller did not terminate playback of said advertisement (see at least column 5, lines 17-19); and*

Bayne does not specifically disclose:

- *determining whether said caller terminated playback of said advertisement.*

However, in at least column 10, lines 45-49, Bayne discloses that the caller may desire to terminate or quit the present call. Therefore, it would be obvious, at the time of the invention, to a person of ordinary skill in the art to conclude that Bayne has disclosed applicant's invention of determining caller terminated playback of the advertisement by determining if the caller quit or terminate the present call, which is equivalent to applicant's invention.

**Claims 5 and 6:**

Bayne discloses the limitations as shown above.

Bayne further discloses:

- *a telephone router for routing an unanswered telephone call to said at least one server (see at least column 11, lines 36-48).*
- *a telephone router for routing an unanswered telephone call to said at least one server, said unanswered telephone call being directed originally to a cellular telephone user (see at least column 4, lines 7-8).*

10. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bayne, US Pat No: 7,158,621 in view of Brawn et al, US Pat No: 6665379 and further in view of Pendse US Pat No: 6,298,056 B1.

**Claims 7 and 10:**

Bayne discloses:

- *a telephone router for routing an unanswered telephone call to said at least one server (see at least column 11, lines 36-48), said unanswered telephone call being originally directed to a cellular telephone use (see at least column 4, lines 7-8);*
- *a storage component for advertisements and messages (see at least column 5, lines 13-16);*
- *an input/output component for communicating with said telephone router (see at least column 6, lines 1-17);*
- *selecting an advertisement for playback (see at least column 3, lines 44-47), playing said advertisement to a caller (see at least column 9, lines 59-60);*
- *billing an advertiser if said caller did not terminate playback including charging said advertiser an advertiser fee (see at least column 5, lines 17-19);*

Bayne does not specifically disclose:

- *determining whether said caller terminated playback of said advertisement,*

However, in at least column 10, lines 45-49, Bayne discloses that the caller may desire to terminate or quit the present call. Therefore, it would be obvious, at the time of the invention, to a person skill in the arts to conclude that Bayne has disclosed applicant's invention of determining caller terminated playback of the advertisement by determining if the caller quit or terminate the present call, which is equivalent to applicant's invention.

Bayne does not, but Pendse, however does disclose:

- *crediting a user account* (see at least column 2, lines 61-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Bayne's advertising incoming and voice messaging calls with Pende's crediting subscriber of telephony service facilitation with the motivation of enhancing user experience and increasing telephone service providers' profitability and marketability.

Bayne does not, but Brown, however does disclose:

- *reading a plurality of user customized said advertisement information* (see at least column 11, lines 26-47);

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Bayne's advertising incoming and voice messaging calls with Brawn's targeting advertisement to voice messaging system based consumers information with the motivation of providing consumers with preference to customize their voice mail system in order to tailor the function of the system to their desired preferences.

11. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bayne, US Pat No: 7,158,621 in view of Pendse US Pat No: 6,298,056 B1.

**Claim 8:**

Bayne discloses:

- *a means for routing an unanswered telephone call from a caller to a user* see at least column 11, lines 36-48);
- *a means for playing an advertisement for said caller; a means for billing an advertiser for playing said advertisement* (see at least column 9, lines 59-60);  
*and*

- *a means for receiving a message from said caller* (see at least column 14, lines 30-31).

Bayne does not, but Pendse, however does disclose:

- *a means for crediting said user account* (see at least column 2, lines 61-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Bayne's advertising incoming and voice messaging calls with Pendse's crediting subscriber of telephony service facilitation with the motivation of enhancing user experience and increasing telephone service providers' profitability and marketability.

**Claim 9:**

Bayne discloses the limitations as shown above.

Bayne further discloses:

- *wherein said user is a cellular telephone user* (see at least column 4, lines 7-8).

12. Claims 2, 3, 13, 14, 17, 18, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bayne, US Pat No: 7,158,621 in view of Brawn et al, US Pat No: 6665379.

**Claims 2, 3, 13, 14, 17, 18, 21 and 22:**

Bayne discloses the limitations as shown above.

Bayne does not, but Brown however does disclose:

- *wherein said process further includes reading a plurality of user information* (see at least column 11, lines 26-47);
- *a user customized said advertisement* (see at least column 11, lines 26-47);

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Bayne's advertising incoming and voice messaging calls with Brawn's targeting advertisement to voice messaging system based consumers information with the motivation of providing consumers with preference to customize their voice mail system in order to tailor the function of the system to their desired preferences.

13. Claims 4, 12, 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bayne, US Pat No: 7,158,621 in view of Pendse US Pat No: 6,298,056 B1.

**Claims 4, 12, 16 and 20:**

Bayne discloses the limitations as shown above.

Bayne discloses:

- *billing said advertiser includes charging said advertiser an advertiser fee (see at least column 5, lines 17-19) and*

Bayne does not, but Pendse, however does disclose:

- *crediting a user account (see at least column 2, lines 61-67).*

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Bayne's advertising incoming and voice messaging calls with Pendse's crediting subscriber of telephony service facilitation with the motivation of enhancing user experience and increasing telephone service providers' profitability and marketability.

### **Conclusion**

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
- Brawn et al, US Pat No.: 6665379 B1, teaches voice messaging system using information from incoming telephone call to respond call.
  - Abuan et al, US Pub No.: 2003/0046151 A1, teaches dynamic audio advertising updates.
  - Kamel et al, US Pat No.: 5,937,037, teaches communications system for delivering promotional messages.
  - Stevens, US Pat No.: 6,445,778 B1, teaches telephone tag entertainment.
  - Olshansky, US pat No.: 6,493,437 B1, teaches advertising –subsidized PC-telephony.
  - Bookstaff, US Pat No.: 7,187,761 B2, teaches method and system for providing advertising to telephone callers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Affaf Ahmed whose telephone number is 571-270-1835. The examiner can normally be reached on Monday - Friday, 8:30 am-6:00 pm est, alt Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached at 571-272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at

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866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*AB*

*Yehdega R. He*  
**RETTA YEHDEGA**  
**PRIMARY EXAMINER**